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World Trade Organization and its impact on the freedom of investment contracts

Boucetta Djamel*
Larbi Ben MhidiUniversity - Oum El Bouaghi, Algeria
Faculty of Law and Political Science.
Boussetta.djamel@univ-oeb.dz

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Abstract:

In line with economic globalization, of which the World Trade Organization is one, States have had to keep pace with the changes taking place in the world by undertaking several reforms to conform to the laws and principles of the new world economic order. One of the most important of these is to promote foreign direct investment contracts and to remove artificial barriers to the freedom of investment and trade. Such measures by most developing countries are contrary to economic openness.

key words: World Trade Organization, investment contracts, economic openness, contractual freedom.

Introduction:

Economic globalization is the key to the new systems of integrated production dominated by multinational corporations that drag the globalization train through foreign direct investment and the cross-border movement of factors of production and capital without any restrictions to reach all the world ' s markets. International economic institutions have been credited with establishing the new world economic order, the most important of which is the World Trade Organization (WTO), using them as a tool for implementing their schemes. This international institution has worked to achieve economic globalization and has been recognized as a binding decision-making authority

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*BoucettaDjamel

applicable to all Member States and has become a supreme authority over the Governments of those States, despite the fact that article II of the Charter of Economic Rights and Duties of States provides for the right of States to regulate foreign investments, which is a fundamental aspect of the exercise of full sovereignty over their economic wealth and activities. The problem we are dealing with is:
Is the content of the contractual freedom of investment enshrined in Algerian legislation compatible with the laws and principles underlying the new world economic order?.

SECTION I : Economic Globalization

The establishment of the World Trade Organization (WTO) is one of the most important events of the twentieth century that has given rise to the emergence of new concepts (Al-Tikriti, 2010, p. 453) in international economic relations, namely, the creation of a new world economic order based on free trade, investment and specialization in various production processes, the dominance of multinational corporations and the growing pressure of the advanced industrialized countries to integrate into the new world economic order, which is being led by the WTO, by imposing a set of uniform world economic rules through its conventions and imposing on Member States that wish to adhere to them.

First Requirement: Mechanisms of economic globalization

The organization is one of the fundamental mechanisms of economic globalization and the essence of controlling the new world economic order. It is intended to be a global forum for cooperation, dialogue and negotiation on issues related to international trade. We will try to define this organization and then articulate the principles on which it is based and which have enabled it to achieve its objectives.
Only the World Trade Organization (WTO) has competence over international trade laws, and its primary task is to ensure that trade flows are as safe, accessible and free as possible among member States (Helmi, 1996, p. 131), and whether its

establishment is the result of a transformation of the GATT, after 50 years of ongoing negotiations until the Marrakesh cycle (Khalifa, 2008, p. 12), which it established, is defined as "a world economic organization with a legal personality" (an independent organization) that liberalizes international trade among its members and seeks to shape and guide global economic activity. (Abbou, 2011, pp. 58-60)"

The World Trade Organization (WTO) is based in Geneva, Switzerland, and is chaired by a Secretary-General elected by the WTO Council of Ministers. The organization currently has a large membership of 164 countries with trade of 90% of the world ' s trade (kabel, 2008, p. 96). The organization is unanimous in its decisions, providing equal access for members to decision-making regardless of their size. It has become the institutional framework for the new global system, which is active not only in trade but also in finance, services, investment and intellectual property rights. It exercises stronger power in dispute settlement, implements and manages the GATT Agreements and all the results of the Uruguay Round, provides a multi-party trade negotiation programme and periodically reviews the trade (Moussa, 2007, p. 99) policies of member States. It has also played a key role in achieving greater coherence in global economic policy and in the exchange of benefits to reduce tariffs and other trade barriers (Salim, 2008, p. 53) and eliminate discriminatory treatment in international trade relations.

Second Requirement : Role of the World Trade Organization in embodying economic

globalization It shall ensure that its members abide by its principles in order to achieve the objectives it has set for freeing international trade from all restrictions to which it may be subjected or limiting its expansion. By applying these principles, it shall be able to achieve economic globalization. One of the Organization ' s most important principles is:

1. Most-favoured-nation principle

2. Principle of national treatment.
3. The principle of transparency.
4. The principle of the reduction and elimination of customs restrictions.
5. Principle of prohibition of quantitative restrictions on imports and exports.

However, what we can note on these principles is that it has enabled developed countries to obtain most of the concessions without negotiations, given their potential in various fields, because the members of the Organization are not as well in economic conditions. Moreover, a State wishing to join and to become a member is obliged to submit a reservation to the Organization.

The Trade Policy Note, which contains:

Information on the State economic system, particularly foreign trade (asma, 2013, p. 18):

- Provide all information, laws and legislation governing foreign trade and a precise description of the legal provisions and procedures that include their application.
- **Submission of a table of concessions:** Schedules containing tariff concessions made by States and attached to Petrocol de Marrakesh with a view to liberalizing trade in goods are a binding legal document, under which no State has the right to retract from its commitments registered therein and to increase its tariff rate only in the context of new negotiations. This is in accordance with the provisions of article 28 of the GATT 1994 Schedule Amendment Convention (wto, 1994), in the sense that tariff concessions take the form of legal undertakings.

These above-mentioned conditions are non-negotiable and we can say that contractual freedom under the World Trade Organization (WTO) has become of a peremptory nature.

SECTIONII : The impact of the World Trade Organization on the contractual freedom of States

By acceding to this body and signing its conventions, the majority of the world ' s countries are obliged to amend their domestic legal systems in conformity with the principles and provisions of the Organization ' s conventions, which will lead to the existence of common rules among the world ' s countries governing international trade. Thus, the whole world becomes economically integrated. This is what is known as economic globalization, which will inevitably have positive and negative effects on all countries, but depending on the strength of each economy. In the context of Algeria ' s accession to this organization, it will be particularly vulnerable to this impact in the contractual sphere in investment matters

.**First Requirement: WTO investment contracts**

If a State is free to enter into contracts with those States that wish to do so in its foreign relations and international transactions, it is a manifestation of national sovereignty. However, once it joins the Organization, a State that wishes to join it will seek to negotiate with the other members of the Organization and conclude trade agreements until the rest of the States are satisfied with its support in accepting the regulations. It will not be free to choose the States with which it deals. Since Algeria is in the process of joining the Organization, it is well aware that accession means acceptance of the provisions and rules of these conventions, in the sense that it will not be free to adopt economic laws, and it is obliged to do what it has undertaken during the accession negotiations.

With regard to trade-related investment measures, which had become WTO regulation, the United States of America was the first to call for negotiations on trade-related investment measures within WTO, which was due to the fact that the majority of the world ' s international investors facing such measures were in fact American companies.

The Agreement on Trade-Related Investment Procedures (TRIMS) has defined the meaning of such procedures as the conditions established by the Governments of the host countries for foreign investment, usually consisting of a set of laws, regulations, procedures or administrative decisions and actions governing the handling of foreign direct investment. This is achieved by determining a number of advantages and incentives to attract such investments to specific areas and activities of special priority in accordance with the economic development scheme and programmes applied by the State.

These measures are considered by the drafters of the Agreement (Trims) as restricting and distorting world trade, as they run counter to the principles underlying the 1994 Jat Agreement. They also limit the growth of world trade and create obstacles to the movement of investments across international borders. It is therefore necessary to work towards the removal of artificial barriers to free trade through the restriction of foreign direct investment.

Thus, the main objective of this Agreement is to liberalize international trade and foreign direct investment by removing all obstacles to their transfer between States. This is in order to achieve a higher rate of economic growth in the member States of the Organization hosting foreign direct investment. In other words, the investment measures prohibited under this Agreement are those that are incompatible with the principle of national treatment or with the principle of the general elimination of restrictions on quantity. The annex to this Agreement provides an illustrative list of measures that are contrary to these principles.(Jamaa, 2001, p. 531).

- Procedure for the local component requirement.
- Procedure for the trade balance clause in the balance of payments.
- Procedure for the export boundary clause.
- Procedure relating to the foreign exchange balance clause.
- Procedure for local sales requirements.

We shall explain these measures and their compatibility with the basic principles of the World Trade Organization. The first

paragraph of this supplement contains two measures that are not in conformity with the provisions of the commitment to the principle of national treatment. These measures are:
1. Require the foreign investor to purchase or use production inputs of local origin, whether in the form of certain products or in the form of a volume or value of the products determined in absolute terms or as a proportion of the project ' s production volume or value.
2. The import or use of imported products by the foreign investor shall be limited to a certain quantity, representing a specified proportion of the volume or value of domestic products exported by the foreign investor.
These measures are considered to be import-restricting and not in accordance with the principle of national treatment. Paragraph 2 of the present annex contains three measures that are not in conformity with the obligation to abolish quantitative restrictions (Morsi, 2011 , p. 161):
a- Restricting the import by foreign investors of products used in or associated with its domestic production, whether absolute or related to the volume or amount of domestic products imported. This measure is also a trade balance requirement, i.e. linking the enterprise ' s import capacity to the need to provide foreign exchange earnings from the export of its products.
b- Import by an investor of products used in or associated with its domestic production is restricted by determining the value of foreign exchange available to the foreign investor to finance its imports with a certain proportion of the value of the foreign exchange to which it flows in the host country and this measure is called the requirements of the foreign exchange balance.
c- The export or sale of products by the investor for the purpose of export is restricted, whether by specific adherence to certain products or in the form of the volume or value of the products or in the form of a proportion of the volume or value of the domestic production of the enterprise. This means the investor ' s obligation to sell a certain proportion of its production or a

minimum amount of production in the form of a value or quantity of production in the domestic market of the host country for investment. This measure is called the domestic sales requirements, which include a quantitative restriction of exports. If article 2 of the Charter of Economic Rights and Duties of States provides for the right of States to regulate foreign investments, which is a fundamental aspect of the exercise by States of their full sovereignty over their wealth and economic (waali, 2012, p. 59)activities, the scope of this right shall be determined by:

The foreign investor and the practices of multinational corporations are subject to the national laws and regulations of the host State:

- Control of companies to ensure that they do not interfere in internal affairs
- Freedom of the State to determine the type of treatment it grants to foreign investors
- The expropriation of foreign property for the benefit of the public interest, public order or national interest and the assessment of appropriate compensation in accordance with its own laws;

But this is no longer acceptable in the WTO Agreement, which required member states to do so.

Second Requirement: Impact of the Agreement on Trade-Related Investment Measures on contractual freedom:

If the objective of developing countries to attract foreign direct investment is to find solutions to their economic problems for development(Amran, 2013, p. 364), the objective of developed countries, including the United States of America, to include foreign investment within the World Trade Organization (WTO) is to give international cover in their dealings with investment host countries14(Badawi, 2004, p. 25), so as to enable their global firms to operate more easily in external markets, particularly in the markets of developing countries.

The Trade-Related Investment Agreement is one of the most important agreements of the World Trade Organization (WTO), which aims to promote broad and progressive liberalization of world trade, by prohibiting a series of procedures and conditions placed by domestic authorities on foreign investment that they wish to host on their territory.
Among the conditions contained in the TRIMS agreement is that a foreign investor is not required (rafika, 2010-2011) to use a certain proportion of the domestic component of the final product, to balance its exports and imports, or to require it to export a certain proportion, value or quantity of final products abroad in order to attract foreign currency.
These conditions and procedures, in the view of developed countries and behind them by multinational corporations, restrict the freedom of international trade and limit the freedom of States to contract because the foreign investor has the right to import all of his or her business needs according to his or her own estimates and to deal with his or her investment products in accordance with his or her own interests.
Whatever the content of this Agreement and the measures and procedures it contains, which have been established as binding provisions, may not be infringed by member States. This does not preclude the assertion that this Agreement is an interference, but rather a denial to the host States of matters and procedures that fall within their national jurisdiction as they are linked to their sovereignty (Zahran, 2012) and their contractual freedom.
For example, the freedom of the foreign investor to import raw materials from a State other than the State in which he invests, despite the availability of such materials, is a bargain from the foreign investor of that State for these primary materials in order to reduce their value to the extent that it pleases them.
While trying to join the World Trade Organization (WTO), Algeria was obliged to amend its laws in accordance with the provisions of the Agreement in order to attract foreign investment, it must accept those conditions, which were

considered to be a right of interference and a reduction in national economic sovereignty. How could a foreign investor leave the raw materials available in Algeria and import them from another State on the pretext of a lack of cost and acceptance of those conditions?
The Organization has succeeded in establishing a set of legal rules that underpin the unification of world markets, by which it has imposed on States to amend their domestic legislation in conformity with its provisions, thereby having a wide and profound impact on the legal legislation of their member States, and the mandatory submission of disputes between States to their dispute settlement machinery, as well as their responsibility to monitor the application by Member States of their rules and the provisions of their conventions, all of which are due to their success in the field of world trade and thus impose their contractual terms on States to accede to them.
While Algeria has provided important incentives, benefits and guarantees for these foreign investments, which have been accompanied by reforms in many fields since the beginning of the 1990s to date, the rate of foreign direct investment flows to the Organization is still low compared with other countries, including the Maghreb countries. This is probably due to the fact that it has not joined the World Trade Organization (WTO). The bulk of investment contracts have come under the auspices of the Organization. This is why Algeria has sought to work towards accession to the Organization. This is evident from the rounds it has undertaken in this regard and the serious negotiations that have been centred on reforms to liberalize foreign trade and encourage foreign investment. This poses serious challenges to the Algerian economy in the area of relevant laws.

Conclusion:

With the birth of the new world economic order and the emergence of the World Trade Organization (WTO), which has been able to influence investment contracts by requiring member

States to amend their domestic investment legislation and bring it into line with the provisions of their conventions, and to accept all the provisions of the WTO agreements without reservation, which is a challenge to contractual freedom, especially since they followed the principle that international relations prevailed that the State was bound only by what it agreed and expected.
While international law recognizes a State under its sovereignty and within the framework of ratification of international treaties and conventions of each State17, to ratify a convention or treaty with certain reservations to certain provisions of the convention, which are not bound by the provisions to which it has made reservations, this is no longer acceptable in the Organization Convention, to which member States have committed themselves to a new principle of universal, mandatory and non-selective acceptance of all provisions of the conventions without reservation. Thus, the Organization has established the power of States to reserve provisions that are not appropriate to them, so that States are obliged to accept such contracts even though they are in a position to comply with their new interests in the light of the requirements of the general interest of the national economy. This has given the concept of freedom of investment to a new content based on integration into the world economy in order to achieve the economic development of States.

Writing conditions :

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2. The pages of the article should be between 15 and 25 pages.
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4. Coordinated and precise paragraphs.
5. Indentation of 0.5 cm.

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